



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,693	01/02/2002	Richard S. Chomik	460.2118USU	5356
7590 04/23/2004				
Charles N.J. Ruggiero, Esq. Ohlandt, Greeley, Ruggiero & Perle, L.L.P. 10th Floor One Landmark Square Stamford, CT 06901-2682		EXAMINER NOLAN, SANDRA M		
		ART UNIT PAPER NUMBER 1772		
DATE MAILED: 04/23/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/032,693	Applicant(s) CHOMIK ET AL.	
	Examiner Sandra M. Nolan	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 14-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims

1. Claims 1-26 are pending, with claims 1-13 are treated here.
2. Claims 14-26 were withdrawn pursuant to the restriction requirement made in the 15 August 2003 office action (the last office action).

Rejections Withdrawn

3. The 35 USC 102 rejection of claims 1-3 and 11 over Bullard et al (US 4,303,710), set out in section 6 of the 15 August 2003 office action, is withdrawn in view of the amendments to claim 1 in applicants' 18 December 2003 response.
4. The 35 USC 103 rejection of claims 4-10 as unpatentable over Bullard, as expressed in section 9 of the last office action, is withdrawn in view of the amendments in applicants' 18 December 2003 response.
5. The 35 USC 103 rejection of claim 12, as unpatentable over Bullard in view of Neal (US 5,129,735), as recited in section 10 of the last office action, is withdrawn in view of the amendments in applicants' 18 December 2003 response.
6. The 35 USC 103 rejection of claim 13, as unpatentable over Bullard in view of Van Gelder et al (WO 02/42364 A2), as set out in section 11 of the last office action, is withdrawn in view of the amendments in applicants' 18 December 2003 response.

New Rejections

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

Art Unit: 1772

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 1-13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1-13 contain new matter. The phrase "mono-layer", now recited in line 5 of claim 1, is not supported by the application disclosure as originally filed. Please delete this term from the claim or indicate where it is supported in the original disclosure.

Note: The examiner may reinstate one or more of the art rejections withdrawn above if the term "mono-layer" is deleted from claim 1.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

Art Unit: 1772

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richards et al (US 4,934,529) in view of Van Gelder et al (WO 02/42364 A2), Feaver et al (US 4,890,934) and JP 02081801A (abstract only).

Richards teaches a cassette for dispensing flexible tubing (title; abstract) made of high density polyethylene (col. 2, lines 10-13). It fails to teach the use of the colorant, deodorant or fragrance additives recited in claims 11-12 or mono-layer tubing.

Tubing is deemed to be a type of container.

Van Gelder teaches plastic bags that mask unpleasant, such as those associated with dirty diapers (page 1, third full paragraph). The bags are made of polyethylene and contain fragrance and odor barrier materials (page 2, first full paragraph).

Feaver teaches carrier bags that comprise mono-layer films (col. 2, lines 30-31) of polyethylene (col. 2, lines 22-23). The bags are used to store and ship disposable diapers (col. 1, lines 8-12).

JP 02081801A teaches the use of deodorants in single layer (use/advantage section) polyethylene bags (first paragraph of abstract) to give good deodorizing effect (use/advantage section).

Bags are deemed to be containers.

The terms "mono-layer" and "single layer" are deemed to be synonymous.

The four references are analogous because they all deal with polyethylene containers.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ single layer versions of the polyethylene bags of Van Gelder, as suggested by Feaver and JP 0201801A, in the tubing used in the cassettes of Richards in order to make cassettes from which containers for dirty diapers can be dispensed.

The motivation to employ the single layer polyethylene bags of Feaver or JP-02081801A as the bags of Van Gelder is found at col. 1, lines 8-12 of Feaver, where the use of such bags to store and ship diapers is taught and in the use/advantage section of JP 02081801A, where its bags are said to have good deodorizing effect.

The motivation to employ the deodorized bags of Van Gelder in the cassettes of Richards is found at page 2, first full paragraph of Van Gelder, where the fragrance and odor barrier additives in its bags are discussed. Also, note that Van Gelder teaches the use of its bags to hold dirty diapers at page 1, third full paragraph.

It is deemed desirable to place bags for dirty diapers, especially those containing deodorants and barrier materials, in cassettes in order to facilitate their dispensation when needed.

The use of one or more colorants, deodorants, or fragrances in containers for dirty diapers is deemed a matter of design/engineering choice, depending upon the properties desired in the containers.

Response to Arguments

12. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 1772

Final Rejection

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any inquiry concerning this communication should be directed to Sandra M. Nolan, whose telephone number is 571/272-1495. She can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the examiner are unsuccessful, her supervisor, Harold Pyon, can be reached at 571/272-1498.

The fax number for patent application documents is 703/872-9306.

S. M. Nolan

S. M. Nolan
Primary Examiner

SM 10032693(20040419)